JACOB DYKSTRA

IBLA 70-545 Decided April 22, 1971

Color or Claim of Title: Generally -- Color or Claim of Title: Good Faith

Where the applicant's holding of land under the Color of Title Act is neither good faith, peaceful, adverse possession, nor for the statutory period of 20 years, the application must be rejected.

Color or Claim of Title: Good Faith

The 20-year period of good faith adverse possession required to qualify an applicant under Class I of the Color of Title Act must immediately precede the date on which the applicant first learned of the defect in his title, and he may not rely on the good faith possession of remote predecessors in his chain of title despite the bad faith of his immediate predecessors. The chain of good faith possession, once interrupted, must begin anew.

IBLA 70-545	:	Sacramento 44
	:	
	:	Color of title
JACOB DYKSTRA	:	application rejected
	:	
	:	Affirmed

DECISION

On August 10, 1966, Jacob Dykstra filed a Class I application under the Color of Title Act to acquire unsurveyed Foster and South Foster Islands, lying in the Sacramento River in Secs. 11 and 14, T. 23 N., R. 2 W., Mount Diablo Meridian, California. These islands apparently have joined to become a single tract, although the delineation between them is still discernible.

The application was rejected by the Sacramento land office by its decision of March 23, 1970, on the ground that the applicant and his predecessors in interest had not held the land in good faith for a 20-year period as required by Class I of the Color of Title Act of December 22, 1928, as amended, 43 U.S.C. 1068, 1068a, because they knew the land was either federally owned or belonged to the State of California.

Dykstra's application shows that he acquired his claim of title by a quit claim deed from Susanne P. Dolman on May 5, 1960. The record shows that one N. J. Cramer filed an application with the Sacramento land office on May 5, 1949, for the survey of Foster Island. In this request Mr. Cramer described the land as land omitted from the original surveys, and he stated that he was making the request, "in order that the applicant may filed (sic) a homestead thereon and purchase same from the United States Government in accordance with the laws of the United States . . ."

Cramer then recorded this application in volume 203, page 30 of Official Records, Tehama County, California, on May 6, 1949. Subsequently, N. J. Cramer et ux. quitclaimed their interest to Thomas W. Laird et ux. on June 6, 1949. The Lairds were also grantees by virtue of a deed from Ivan W. Brown et ux, recorded on March 30, 1946. On September 22, 1949, Thomas W. Laird and Sylvia Lee Laird addressed a document to the Attorney General of California entitled "Notice of Intention to Apply for Survey" in which they stated their intention to apply for a governmental survey of the land known as Lower Foster Island pursuant to 43 U.S.C. 2, 1201, "it being the contention of the undersigned that said land is public land of the United States and is subject to survey and disposition as such."

On appeal, Dykstra contends that he has known about the property since 1932, and the first person to infer that it was not part of the Reed Ranch was Cramer, who moved onto the land in 1949 and requested that a survey be made by the Bureau of Land Management at that time. Appellant states that he has always been of the opinion that if this was not Reed Ranch land then it was Bosquejo Ranch land for more than 20 years and that he at no time felt that it was anything but adversely held private land. He further argues that if knowledge of the federal ownership can be imputed to Cramer in 1949, the land was still held for more than 21 years prior to that time by Cramer's predecessors, and that this period of possession is sufficient to satisfy the statute.

Dykstra's contention that he at no time regarded this land as anything but adversely held private land is not borne out by a letter which he wrote to the State Land Commissioner of California on April 26, 1955, regarding Foster Island. In that letter he stated as follows:

> This land lies between the surveyed boundaries of the Capay and Bosquejo Ranches, and is therefore the property of the state. . . .
>
> I have a financial interest in this land and would like to clear title to it if I can. The state would no doubt like to get this land on the tax rolls and it could pay good taxes if title was cleared.

> For this reason I am requesting on what [indistinct] the "State land Commission" would consider [indistinct] a title so the title would be clear.

Moreover, in his statement of reasons for this appeal Dykstra states:

> [W]hen Mr. Cramer made the application for survey it occurred to me it might be an idea to get a title better than possessory interest. I knew the property had an unsecured title because it was so listed in the assessor's office. This was common knowledge.

The ranches referred to border the river on opposite sides so that the island(s) lies between them. Appellant submits that his belief that the land was privately owned was based on his assumption that the island was originally part of one or another of the ranches which lie on either side of the river. An application to purchase a public land island under the Color of Title Act must be rejected where the only showing of the existence of a color of title in the applicant is an unfounded belief that the island was included in the transaction when title was acquired to a tract on the mainland many years ago. The Wisconsin Michigan Power Company, A-31037 (December 18, 1969), and cases cited therein.

If appellant knew at the time of conveyance to him that he was not thereby acquiring title, he is barred from relief under the act. An applicant who believes that title to land is in the United States or in a State at the time when he purported to acquire it from his predecessors in interest does not hold color of title in good faith. Anthony S. Enos, 60 I.D. 106 (1948); Purvis C. Vickers, 67 I.D. 110 (1960). There can be no such thing as good faith in an adverse holding where the party knows that he has no title and that, under the law, which he is presumed to know, he can acquire none by his occupation. Deffeback v. Hawke, 115 U.S. 392, 407 (1885); Henshaw v. Ellmaker, 56 I.D. 241 (1937).

On the other hand, if we assume (against the evidence) that he believed that the deed from Susanne Dolman invested him with title, the combined period of his good faith possession, when added to that of his immediate predecessors is inadequate to qualify under the act. A color of title application is properly rejected where it appears that the appellant cannot establish a holding of the tract in good faith for 20 years and where certain of his predecessors in interest were aware of the superior title of the United States prior to conveying away their alleged interest; and therefore appellant's holding could not be tacked on to that of the aforementioned predecessors to establish the requisite period. Nora Beatrice Kelly Howerton, 71 I.D. 429 (1964). Both the Lairds and Cramer recognized the federal interest in 1949. The Lairds did not sell until August 1951. Dykstra said in his application that he learned he did not have title in March 1963. Under the most favorable interpretation of the evidence Dykstra could have only eleven years seven months total good faith posession.

We turn now to appellant's contention that even though the Lairds and Cramer, respectively, acknowledged their recognition of federal ownership in 1949, there is a chain of title which extends back to 1921 which more than covers the 20-year period of good faith possession required for qualification under the act. The fact that the land may have been held by other persons in good faith for more than 20 years under color of title does not justify the issuance of a patent under the Color of Title Act to one who thereafter purchases the land with knowledge that title was in the United States. Arthur K. Tetrick, A-30388 (July 22, 1965); Prentiss E. Furlow, 70 I.D. 500, 504 (1963); Purvis C. Vickers, 67 I.D. 110, 111 (1960); Anthony S. Enos, 60 I.D. 329 (1949). The 20-year period of which the statute speaks must immediately precede the date on which the applicant learned of the defect in his title. It would not be consistent to deny an applicant credit for the bad faith possession of his recent predecessors and yet allow him to avail himself of the good faith possession of his remote predecessors. Once the chain of title on which the applicant must rely to show good faith possession is broken, the statutory period is interrupted and must begin anew. That is, if the property comes into the possession of one who could not himself acquire it under the act, then his successors are also barred until the statute has again been satisfied. Prentiss E. Furlow, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the land oficce decision of March 23, 1970, is affirmed.

Edward W. Stuebing, Member

We concur:

Francis E. Mayhue, Member

Martin Ritvo, Member.